

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONEL HERNANDEZ,
Plaintiff,

v.

J. WELCH,
Defendant.

Case No.: 1:23-cv-01563-JLT-SKO

**FINDINGS AND RECOMMENDATIONS TO
DISMISS CERTAIN CLAIMS**

14-DAY OBJECTION PERIOD

Plaintiff Leonel Hernandez is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. BACKGROUND

Plaintiff filed his complaint on November 6, 2023. (Doc. 1.) On February 21, 2024, the Court issued its First Screening Order. (Doc. 8.) The Court found Plaintiff plausibly alleged an Eighth Amendment threat to safety claim against Defendant Welch but failed to allege any other cognizable claim. (*Id.* at 4-9.) Plaintiff was ordered to do one of the following within 21 days of the date of service of the order: (1) notify the Court he did not wish to file a first amended complaint and was willing to proceed only on his cognizable claim against Defendant Welch; or (2) file a first amended complaint; or (3) file a notice of voluntary dismissal. (*Id.* at 9-10.)

On March 4, 2024, Plaintiff filed a notice indicating he “would like to proceed only on the Eighth Amendment threat to safety claim, and decline the first [amended] complaint.” (Doc. 9.)

II. DISCUSSION

For all the reasons provided in the Court’s First Screening Order (Doc. 8) issued February 21, 2024, and in light of Plaintiff’s subsequent notice (Doc. 9), the Court will recommend this action proceed on Plaintiff’s Eighth Amendment threat to safety claim against Defendant Welch, the remaining claims to be dismissed.

III. CONCLUSION AND RECOMMENDATIONS

Accordingly, the Court **RECOMMENDS** that:

1. This action **PROCEED** *only* on Plaintiff's Eighth Amendment threat to safety claim against Defendant Welch; and
2. Any remaining claims in Plaintiff's complaint be **DISMISSED**.

These Findings and Recommendations will be submitted to the district judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and Recommendations, a party may file written objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may result in waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: March 5, 2024

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE